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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 STEVEN E. RILEY,

12 Plaintiff,

13 vs.

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15 S. KERNAN, et al.,

16 Defendants.
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Case No.: 3:16-cv-0405-MMA-JMA

**ORDER RESPONDING TO
REFERRAL NOTICE**

[Doc. No. 58]

18 Plaintiff Steven E. Riley, a state prisoner proceeding *pro se*, brought this civil
19 rights action pursuant to 42 U.S.C. § 1983, alleging the Secretary of the California
20 Department of Corrections and Rehabilitation (“CDCR”) and fourteen prison officials
21 violated his constitutional rights by subjecting him to random drug testing, charging him
22 with repeated, falsified disciplinary violations, and placing his name on a list of inmates
23 required to participate in Alcoholics Anonymous/Narcotics Anonymous programs, based
24 on his failure to provide a urine sample. On August 10, 2017, the Court dismissed this
25 action. *See* Doc. No. 53. On August 25, 2017, Plaintiff filed a timely Notice of Appeal.
26 *See* Doc. No. 55.

27 The Ninth Circuit Court of Appeals now refers this matter for the “limited purpose
28 of determining whether in forma pauperis status should continue for this appeal or

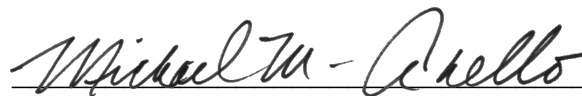
1 whether the appeal is frivolous or taken in bad faith.” *See* Doc. No. 58. Rule 24(a)(3) of
2 the Federal Rules of Appellate Procedure provides that a party granted leave to proceed
3 in forma pauperis (“IFP”) in district court may continue in that status on appeal unless the
4 district court certifies that the appeal is not taken in good faith, which in this context
5 means that it is frivolous. *See Ellis v. United States*, 356 U.S. 674, 674-75 (1958). Title
6 28 of the United States Code, section 1915(a)(3), similarly provides that an appeal may
7 not be taken IFP if the trial court certifies it is not taken in good faith. For purposes of
8 section 1915, an appeal is “frivolous” if it lacks any arguable basis in law or fact. *See*
9 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1225
10 (9th Cir. 1984).

11 After review of the record herein, the Court concludes that Plaintiff’s appeal lacks
12 any arguable basis in law or fact, and thus is considered as not being taken “in good
13 faith” pursuant to 28 U.S.C. § 1915(a)(3). Accordingly, the Court hereby **REVOKES**
14 Plaintiff’s IFP status. *See Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent
15 appellant is permitted to proceed in forma pauperis on appeal only if appeal would not be
16 frivolous).

17 The Clerk of the Court is directed to notify the Ninth Circuit Court of Appeals of
18 this Order. *See* Fed. R. App. P. 24(a)(4).

19 **IT IS SO ORDERED.**

20 DATE: September 1, 2017



HON. MICHAEL M. ANELLO
United States District Judge